

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 1674 - HB 1671

January 16, 2022

SUMMARY OF BILL: Expands eligibility to receive an Education Savings Account (ESA) to include students in local education agencies (LEAs), that during a three-year period preceding September 1, 2025, or thereafter, failed to offer 180 days of in-person learning or implemented certain masking requirements and exemption policies related to the COVID-19 pandemic

FISCAL IMPACT:

NOT SIGNIFICANT

Assumptions:

- The proposed expanded ESA student eligibility criteria will apply to schools beginning September 1, 2022 and through subsequent years that, in response to the COVID-19 pandemic:
 - Failed to offer 180 days of in-person instruction; or
 - Imposed a mask mandate, but does not apply to an LEA that imposed a mask mandate in response to an executive, court, public health department, or other legally binding order; and
 - Refused to exempt one or more students from the LEA's mask mandate in response to receiving written notification from the student's parent or guardian opting the student out of the mask mandate. Does not apply to an LEA that refused to exempt a student from the LEA's mask mandate upon receiving written notification from the student's parent or guardian if the exemption refusal was imposed in response to an executive, court, public health department, or other legally binding order.
- It is unknown what action, if any, regarding mask mandates that an LEA may take in future years. Public Chapter 6 of the 112th General Assembly 3rd Extraordinary Session prohibits schools from requiring a person to wear a face covering while on school property unless certain conditions exist and the masking policy is in effect for no more than 14 days.
- If a mask mandate is imposed in response to an executive, court, public health department, or other legally binding order, then the eligibility is not applicable. Therefore, there is no school that it applies to currently.
- Tennessee Code Annotated § 49-6-3004 requires 180 days of classroom instruction for public schools. However, schools may accumulate up to 13 instructional days (through

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excess instructional time) that may be applied toward meeting instructional time requirements; or, schools may request a waiver from the Commissioner of DOE if the 180 days of classroom instruction is not met.

- It is expected that all public schools will be able to meet the 180 days of classroom instruction beginning in the 2022-23 school year and subsequent years. Therefore, the eligibility criteria related to instructional days will not apply to any schools.
- Public Chapter 506 of the 111th General Assembly was signed into law May 24, 2019, and created the ESA Pilot Program.
- On February 6, 2020, Metro Nashville and Shelby County sued the State, contending that Tennessee’s ESA Pilot Program violated sections of the Tennessee Constitution.
- On May 4, 2020, the Chancery Court of Davidson County ruled that the Program violated the Home Rule provision of the state constitution and entered an order preventing the State from advancing the ESA program.
- The Department of Education (DOE) is currently prevented from taking any further action on completed or pending ESA applications while the court order remains in effect.
- According to the DOE website, DOE is seeking reversal of the court’s order and hopes to succeed on appeal to allow the Program to start enrollment this school year.
- Public Chapter 506 of the 111th General Assembly establishes annual enrollment limits for participation in the Tennessee ESA Pilot Program. Based on the number of eligible students and the participation rate, it is assumed that the yearly cap will be reached every year under current law (see the table below).

School Year	Enrollment Limit	Projected Participants*
2022-23	7,500	7,500
2023-24	10,000	10,000
2024-25	12,500	12,500
2025-26	15,000	15,000

*After the 2025-26 school year, the projected number of participants will be 15,000 each year.

- Because the enrollment limit is expected to be met every year under current law, expanding the number of eligible students will not affect the total number of participants in the Tennessee ESA Pilot Program.
- Tennessee Code Annotated § 49-6-2604 establishes that if, in the application period for a school year, the number of program applications received by DOE exceeds the maximum number of students that may participate in the program for that school year, then DOE shall select students for participation in the program through an enrollment lottery process.
- Based on the projected number of yearly participants, increasing the number of eligible students will increase the number of students in the lottery pool that may be selected for participation in the program.
- The proposed ESA student eligibility criteria does not apply to any schools. Therefore, expanding eligibility under this legislation will not impact the overall number of voucher recipients.

- In the event that the court order is reversed, DOE would be required under current law to implement the ESA Pilot Program.
- Any impact on DOE or LEAs resulting from additional ESA eligibility criteria will be not significant.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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